attendance at an educational institution, it proceeds to exempt from its operation such persons as are "conscientiously opposed to the practice of vaccination and will not consent to being vaccinated." The court very properly holds such a provision inconsistent with the rest of the act, as being no part of a law designed to promote the health of the people, and therefore unconstitutional. Whether the whole vaccination law of 1911 is thereby invalidated, the court does not find it necessary to consider.

W. C. J.

CONSTITUTIONAL LAW: UNREASONABLE SEARCH: PRODUCTION OF DOCUMENTS.—The California Court shows no tendency to make it easier to procure an inspection of an opponent's documents.[1] The attempts have often failed for a number of reasons—(1) want of affidavit of materiality; (2) inexact identification of document required; (3) omnibus order for all documents, papers, etc.; (4) "fishing excursion"; (5) violation of the constitutional right against unreasonable search.[2]

The disappointed seeker can console himself that it was no easier under the former English system, which was based on the theory that evidence should be concealed until trial; even in equity, discovery was hindered by intricate limitations.[3] In California, section 1000 of the Code of Civil Procedure gives a right to inspect documents relating to the merits of the action, while the deposition of a party can always be taken and the witness ordered to produce documents on the hearing thereof.[4] These sections probably obviate the necessity of a bill of discovery and enlarge its scope.[5] Inherited tradition and the intense individualism surviving from the nineteenth century, however, continue the obstacles in the way of obtaining evidence from an opponent before trial. Even in England where the rules of court are very liberal, the practice both for interrogatories

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[1] Funkenstein et al. v. Superior Court, (Jan. 7, 1914) 18 Cal. App. Dec. 87.

[2] Ex parte Clarke, (1899) 126 Cal. 235, 58 Pac. 546; 77 Am. St. Rep. 176; 46 L. R. A. 835. Hibernia S. & L. Soc. v. Kaufman, (1903) 140 Cal. 69; 73 Pac. 750; Madera Ry. Co v. Raymond Granite Co., (1906) 3 Cal. App. 668; 87 Pac. 27; Union Collection Co. v. Superior Court, (1906) 149 Cal. 790; 87 Pac. 1035; Kullman, Salz & Co. v. Superior Court, (1911) 15 Cal. App. 276, 114 Pac. 589; San Fernando Copper Mining & Reduction Co. v. Humphrey, (1901) 111 Fed. 772. The Federal practice is narrower than the State. Carpenter v. Winn, (1910) 221 U. S. 533.

[3] Wigmore on Evidence, Chap. LXII.

[4] Ex parte Clarke, supra.

[5] Wright v Superior Court, (1903) 139 Cal. 469; 73 Pac. 145; Union Collection Co. v. Superior Court, (1906) 149 Cal. 790; 87 Pac. 1035.

and documents is restricted.[6] In California the scope of the questions permissible on the taking of a deposition is seldom involved, but the production of papers has been resisted with marked success.

The United States Supreme Court is responsible for the overstrained and unhistorical notion that the constitutional prohibition of unreasonable searches applied to discovery in private litigation.[7] In recent years, however, the tendency of that court has been to concede the fullest discovery in that class of cases where the constitutional provision might seem to apply—grand jury investigations of crime. It is now possible in the Federal courts to compel the production of a corporation's cash books, ledgers, journals, books of account, letters, telegrams, stock books and other papers and documents, before a grand jury for the avowed purpose of determining whether to proceed criminally against the corporation and its officers, and no constitutional right against unreasonable search or self crimination is of any avail.[8] If production in this manner can be compelled before a large body like a grand jury where the danger of disclosure is proportionally large, where the hearing is secret, and the witness without the protection of court or counsel, and with no means of guarding against the improper use of the books, it would seem that there should be no constitutional objection to the production of books under the safeguards of civil litigation in such cases as ex parte Clarke.[9]

Of course the court should protect a party from disclosure of his private business affairs not reasonably involved in the litigation; but the court should have the power to determine this question and no artificial rules as to an "omnibus order" or misapplied constitutional guaranties should bar disclosure where a court really believes a fraud has been committed and an inspection of the party's books will reveal the truth. Private litigation may require as wide a disclosure as a government prosecution and a private litigant should have the same right.

A. M. K.

CORPORATIONS: STOCK ISSUED AS FULLY PAID UP WHEN NOT SO IN FACT: RIGHTS OF CREDITORS TO RECOVER THE UNPAID BALANCE.—The rights of creditors of an insolvent corporation against holders of its stock issued as fully paid up, when

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[6] Attorney-General v. Newcastle upon Tyne Co., L. R. (1899) 2 Q. B. 478; White v. Spafford & Co., L. R. (1901) 2 K. B. 241; Maass v. Gas, Light and Coke Co., L. R. (1911) 2 K. B. 543; Knapp v. Harvey, L. R. (1911) 2 K. B. 725.

[7] Boyd v. U. S., (1885) 116 U. S. 616.

[8] Hale v. Henkel, (1905) 201 U. S. 43; Wilson v. U. S., (1911) 221 U. S. 361; Wheeler v. U. S., (1913) 226 U. S. 478; Grant v. U. S., (1913) 227 U. S. 74; Johnson v. U. S., (1913) 228 U. S. 487; Norcross v. U. S., (1913) 209 Fed. 13.

[9] Ex parte Clarke, supra.